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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/689,557	10/20/2003	Borden M. Larson	20238.18CON	8391

7590 12/01/2006  
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EXAMINER

VASUDEVA, AJAY

ART UNIT PAPER NUMBER

3617

DATE MAILED: 12/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/689,557	<b>Applicant(s)</b> LARSON ET AL.	
	<b>Examiner</b> Ajay Vasudeva	<b>Art Unit</b> 3617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 7/31/2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-5 and 17 is/are allowed.
- 6) ☒ Claim(s) 6, 8, 9, 11, 12, 14-16, 18 and 19 is/are rejected.
- 7) ☒ Claim(s) 7, 10 and 13 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *New Grounds of Rejections*

1. Upon a further consideration, claims 14, 15, 18 and 19 – previously indicated as allowable – are being rejected on new grounds. A review of the Hauser (US 2,997,188 A) reference revealed that the Examiner has previously missed identification of a horizontal element (claims 11 and 18), or of an angling capability of the frame not only in a rearward direction, but also in a forward direction (claims 14, 15, 18 and 19).

The Examiner regrets any inconvenience to Applicants or their counsel.

### *Claim Rejections - 35 USC § 102*

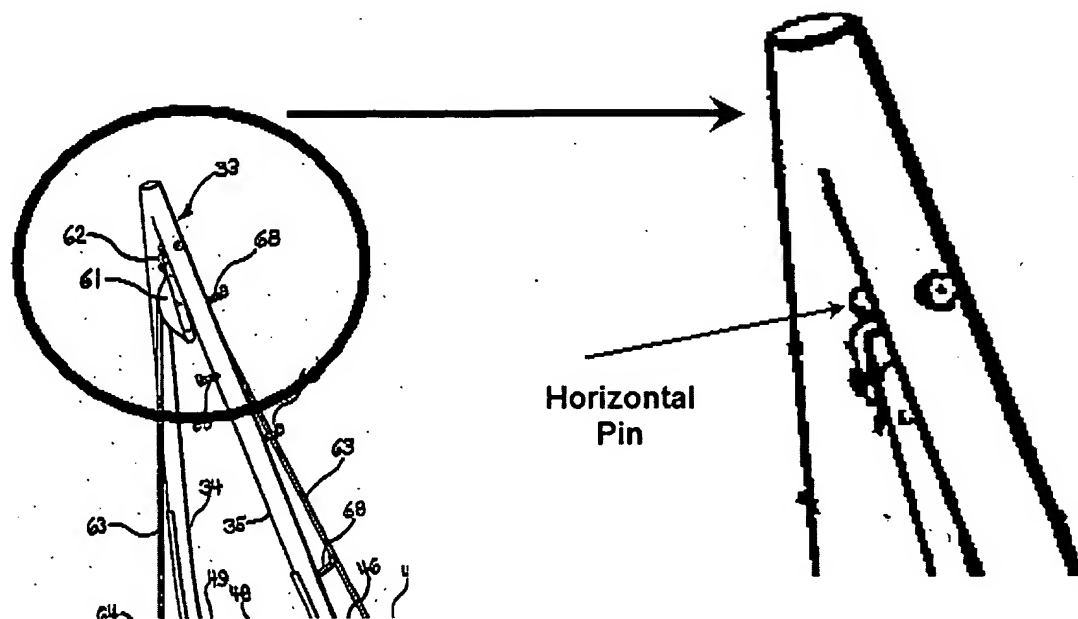
2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 6, 8, 9, 11, 14-16, 18 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Hauser (US 2,997,188 A).

Hauser discloses an apparatus (fig. 1) having a vessel [11] with an operator's station located at least amidships (fig. 2), and a skeletal frame [33]. The skeletal frame has vertical supports [34, 35] rotatably attached to the vessel and has a rope attachment point [61]. Although not expressly disclosed in the Specification, an enlarged view of fig. 1 shows the central portion of the frame as being a horizontal pin that supports a bracket [62]. Such horizontal pin is considered to be a horizontal bridging portion, as required in claims 11 and 18.



The central portion of the frame is located forward of the operator's station. The skeletal frame is capable of towing a human performer behind the boat by rearwardly extending a tow rope above the boat.

Because the skeletal frame is rotatably attached to the vessel, it is capable of angling not only in a rearward direction, but also in a forward direction, as required by claims 14, 15, 18 and 19. (see the phantom lines in figure 2).

Because the skeletal frame is designed to handle large cargo loads, it is considered to be structurally strong for towing a human performer.

Applicant is reminded that any functional limitation(s) following the term "for" -- such as "for supporting an elevated tow rope attachment point" and "for attaching a tow rope for towing the performer" -- is merely an intended use limitation, and therefore is not accorded patentable weight. In the instant case, however, although the Hauser reference does

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not expressly disclose an intended function of towing, the apparatus of Hauser is considered to be capable of undertaking such function.

Applicant is also reminded that the claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function (*see MPEP 2114*). If the prior art discloses all claimed structural limitations and is capable of performing the recited function, it meets the requirements of the claim.

#### ***Allowable Subject Matter***

4. Claims 1-5 and 17 are allowed.
5. Claims 7, 10 and 13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Response to Arguments***

6. Applicant's arguments filed 7/31/2006 regarding the 102(b) rejection based on Hauser ('188) are not persuasive.

Arguments: (a) Applicant has argued that Hauser ('188) does not show the support as being proximate and above the operator's station. (b) Applicant also argued that Hauser ('188) does not teach or suggest the apparatus for towing a performer.

Response: (a) Applicant may note that the limitation "proximate" is merely a relative term, and the support is considered proximate the operator station when considered relative to the stern portion of the boat. Although the support is not "substantially vertically overhead" the operator's station, it is noted that the level of the support is above the level of the operator's station. Therefore, such is considered as being at least "above" the operator's station.

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(b) Applicant may note that any functional limitation(s) -- such as "for towing the performer" -- is merely an intended use limitation, and therefore is not accorded patentable weight. In the instant case, however, although the Hauser reference does not expressly disclose an intended function of towing, the apparatus of Hauser is considered to be capable of undertaking such function. Applicant is also reminded that the claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function (*see MPEP 2114*). If the prior art discloses all claimed structural limitations and is capable of performing the recited function, it meets the requirements of the claim.

### ***Conclusion***

7. The Examiner attempted to contact Applicant's counsel to discuss an Examiner's amendment on Thursday, 12 October 2006, but was notified that he will be out of town for a week. Therefore, this action is made non-final as a courtesy to the Applicant.


8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ajay Vasudeva whose telephone number is (571) 272-6689. The examiner can normally be reached on Monday-Friday 12:00 -- 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, S. Joe Morano can be reached on (571) 272-6684. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Ajay Vasudeva  
Examiner  
Art Unit 3617

  
10/16/06  
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PRIMARY EXAMINER  
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